

1. www.regulations.gov: Follow the on-line instructions for submitting comments.

2. E-mail: mooney.john@epa.gov.

3. Fax: (312)886-5824.

4. Mail: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 28, 2007.

Steve Rothblatt,

Acting Regional Administrator, Region 5.

[FR Doc. E7-5360 Filed 3-22-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2007-0091, FRL-8291-1]

Proposed Finding of Failure To Attain; State of Arizona, Phoenix Nonattainment Area; State of California, Owens Valley Nonattainment Area; Particulate Matter of 10 Microns or Less

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to find that the Phoenix Planning Area (Phoenix nonattainment area) and the Owens Valley Planning Area (Owens Valley nonattainment area) did not attain the 24-hour National Ambient Air Quality Standard (NAAQS) for particulate matter of 10 microns or less (PM-10) by the deadline mandated in the Clean Air Act (CAA or the Act), December 31, 2006. These proposed findings are based on monitored air quality data for the PM-10 NAAQS from 2004 through September 2006.

Several Indian tribes have reservations located within the boundaries of the Phoenix and Owens Valley nonattainment areas. EPA implements CAA provisions for determining whether such areas have attained the NAAQS by the applicable attainment deadline in these reservations. EPA is also proposing that these areas have failed to attain the PM-10 NAAQS. Thus, this proposed rule could potentially affect these tribes. Accordingly, EPA has notified the affected tribal leaders of this proposed rule and is inviting consultation with interested tribes.

If EPA finalizes, after public notice and comment, these failure to attain findings, Arizona and California must submit by December 31, 2007, plan provisions that provide for attainment of the PM-10 NAAQS and that achieve 5 percent annual reductions in PM-10 or PM-10 precursor emissions as required by CAA section 189(d).

DATES: Written comments must be received on or before April 23, 2007.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2007-0091, by one of the following methods:

(1) *Federal eRulemaking portal:* <http://www.regulations.gov>. Follow the on-line instructions.

(2) *E-mail:* lo.doris@epa.gov

(3) *Mail or deliver:* Doris Lo (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available on-line at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the www.regulations.gov or e-mail. www.regulations.gov is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: For Phoenix issues contact Doris Lo, EPA Region IX, (415) 972-3959, lo.doris@epa.gov; for Owens Valley issues contact Larry Biland, EPA Region IX, (415) 947-4132, biland.larry@epa.gov; and for air quality monitoring issues contact Bob Pallarino, EPA Region IX, (415) 947-4128, pallarino.bob@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" are used, we mean EPA.

I. Background

The NAAQS are levels for certain ambient air pollutants set by EPA to protect public health and welfare. PM-10 is among the ambient air pollutants for which EPA has established health-based standards. PM-10 causes adverse health effects by penetrating deep in the

lungs, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 EPA revised the health-based national ambient air quality standards (NAAQS) (52 FR 24672), replacing standards for suspended particulates with new standards applying only to particulate matter up to ten microns in diameter (PM-10). At that time, EPA established two PM-10 standards, the annual standard and a 24-hour standard. On December 18, 2006, EPA revoked the annual PM-10 standard but retained the 24-hour PM-10 standard. 71 FR 61144 (October 17, 2006). The 24-hour PM-10 standard of 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) is attained when the expected number of days per calendar year with a 24-hour average concentration above $150 \mu\text{g}/\text{m}^3$, as determined in accordance with appendix K to 40 CFR part 50, is equal to or less than one. 40 CFR 50.6 and 40 CFR part 50, appendix K.

On the date of enactment of the 1990 Clean Air Act Amendments (CAA or the Act), PM-10 areas, including the Phoenix and Owens Valley nonattainment areas, meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. 56 FR 11101 (March 15, 1991). EPA codified the boundaries of the Phoenix nonattainment area at 40 CFR 81.303 and the Owens Valley nonattainment area at 40 CFR 81.305.

Once an area is designated nonattainment for PM-10, section 188 of the CAA outlines the process for classifying the area and establishes the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM-10 nonattainment areas, including the Phoenix and Owens Valley nonattainment areas, were initially classified as moderate.

Section 188(b)(1) of the Act provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot "practicably" attain the PM-10 NAAQS by the moderate area attainment deadline, December 31, 1994. On January 8, 1993, EPA made such a determination and reclassified the Owens Valley nonattainment area as serious. 58 FR 3334.

Moreover, a moderate area must be reclassified by operation of law if EPA determines after the applicable attainment date that, based on air quality, the area was not in attainment after that date. CAA sections 179(c) and

188(b)(2). On May 10, 1996, EPA published such a reclassification of the Phoenix nonattainment area as serious. 61 FR 21372.

As serious PM-10 nonattainment areas, the Phoenix and Owens Valley nonattainment areas acquired a new attainment deadline of no later than December 31, 2001. CAA section 188(c)(2). However, CAA section 188(e) allows states to apply for up to a 5-year extension of the serious area attainment deadline of December 31, 2001. In order to obtain the extension, there must be a showing that: (1) Attainment by 2001 would be impracticable, (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area, and (3) the state demonstrates that the plan for the area includes the most stringent measures that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area. Both Arizona and California requested extensions under CAA section 188(e) to December 31, 2006. On July 24, 2002, EPA granted Arizona's request to extend the attainment date for the Phoenix nonattainment area to December 31, 2006. 67 FR 48718. On September 3, 1999 EPA granted the request to extend the attainment date for the Owens Valley nonattainment area to December 31, 2006. 64 FR 48305.

For a more detailed discussion of the history of PM-10 planning for the Phoenix and Owens Valley nonattainment areas, please refer to EPA actions on the PM-10 state implementation plans (SIPs) for these areas. 67 FR 48718 (July 25, 2002); 64 FR 48305 (September 3, 1999).

II. Proposed Findings of Failure To Attain

A. Clean Air Act Requirements for Findings of Failure To Attain

EPA has the responsibility, pursuant to sections 179(c) and 189(b)(2) of the Act, to determine within 6 months of the applicable attainment date (*i.e.*, by June 30, 2007), whether the Phoenix and Owens Valley nonattainment areas have attained the 24-hour PM-10 NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's "air quality as of the attainment date" and section 188(b)(2) is consistent with this requirement. EPA determines whether an area's air quality is meeting the PM-10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into EPA's Aerometric Information Retrieval System (AIRS). These data are reviewed

to determine the area's air quality status in accordance with EPA regulations at 40 CFR part 50, appendix K.

As stated above, pursuant to appendix K, attainment of the 24-hour PM-10 NAAQS is achieved when the expected number of exceedances per year at each monitoring site is less than or equal to one. A total of three consecutive years of clean air quality data is generally necessary to show attainment of the 24-hour PM-10 standard. A complete year of air quality data as referred to in 40 CFR part 50, appendix K, comprises all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

There are two basic types of PM-10 monitors, manual samplers and automated continuous analyzers. Manual samplers use a filter to collect PM-10 that must be weighed in a laboratory before a PM-10 concentration can be determined. Automated continuous analyzers run continuously and can produce hourly average concentrations of PM-10 in close to real-time. Most PM-10 monitors do not record a sample every day of the year, either by design or because of operational or maintenance issues. Manual PM-10 samplers generally run on a one-in-every-six day schedule. Automated analyzers generally produce a PM-10 24-hour average concentration every day, but as noted above, operational or maintenance issues may effect an automated analyzer's ability to produce a PM-10 concentration every day of the year.

Because attainment of the PM-10 NAAQS is based on the number of expected exceedances per year, it is necessary to adjust the number of observed exceedances per year to account for any days for which a 24-hour PM-10 concentration is not available. This adjustment results in an estimated number of expected exceedances per year and is made in accordance with the provisions of 40 CFR part 50, appendix K, section 3.1. In two simple examples, if a PM-10 instrument operates every day of the year, then no adjustment is necessary and the observed number of exceedances will be equal to the estimated number of exceedances. If a sampler operates on a one-in-every-six day schedule, then the number of observed exceedances will be adjusted to account for the five days with no samples. In this example, one observed exceedance would be the equivalent of six estimated exceedances.

Most PM-10 samplers in the Phoenix nonattainment area originally operated on a one-in-six day schedule. A number of monitoring sites in the Phoenix

nonattainment area recorded exceedances while operating on this schedule. 40 CFR part 50, appendix K, section 3.1(f) states that EPA will not perform the estimated exceedance adjustment described above if a monitor meets certain conditions, including a change in the sampling frequency to every day monitoring. In an effort to reduce the potential for overestimating the number of expected exceedances, the Maricopa County Air Quality Department began operating some sites on an every day schedule as allowed under the provisions of appendix K. All

of the PM-10 monitors in the Owens Valley network operate every day. Tables 1 and 2 in section II.B. below indicate the operating schedule for each of the violating monitors in the Phoenix and Owens Valley nonattainment areas. As summarized in Tables 1 and 2 in section II.B. below, there are a number of PM-10 monitoring sites in the Phoenix and Owens Valley nonattainment areas that continue to violate the 24-hour PM-10 NAAQS. If a site averages more than one estimated exceedance per year during the three-year attainment period, it is in violation

of the NAAQS (see far right columns of Tables 1 and 2). In the Phoenix nonattainment area, five sites are in violation of the 24-hour PM-10 NAAQS: West Phoenix, Greenwood, Higley, West 43rd Avenue, and Bethune School. In the Owens Valley nonattainment area, seven sites continue to violate the PM-10 NAAQS: Lone Pine, Olancho-Walker Creek Road, Olancho-Dirty Sox, Olancho-Flat Rock, Olancho-Shell Cut, Olancho-Bill Stanley Site, and Keeler.

B. Ambient Air Monitoring Data

TABLE 1.—PHOENIX NONATTAINMENT AREA PM-10 DATA SUMMARY 2004–2006¹

[Sites in Violation of the 24-Hour PM-10 NAAQS]

Site name / AQS ID No.	Operating schedule	1st Max conc. $\mu\text{g}/\text{m}^3$	Number of observed exceedances ²	Number of estimated exceedances	Average number of estimated exceedances per year
West Phoenix, 04-013-0019	1 in 6 / Every day	155	1	6	2
Greenwood, 04-013-3010	1 in 6 / Every day	173	2	7	2.3
Higley 04-013-4006	1 in 6 / Everyday	170	3	3.6	1.2
West 43rd Ave, 04-013-4009	1 in 6 / Every day	260	26	26	8.7
Bethune School, 04-013-8006	1 in 6	198	1	6.4	2.1

¹ The data in Tables 1 and 2 for both nonattainment areas are only for the period January 1, 2004 through September 30, 2006. EPA generally uses a complete three-year set of data in making nonattainment/attainment determinations. EPA does not currently have the data for the last quarter of 2006 and the State is not required to submit them until March 31, 2007. See 40 CFR 58.16(b); 71 FR 61236 (October 17, 2006). However, when less data are sufficient to unambiguously establish nonattainment, 40 CFR 50, appendix K, section 2.3(c) allows EPA to determine that a monitor is in violation of the PM-10 NAAQS.

² There were additional exceedences observed in the Phoenix nonattainment area that are not included in this table. The State of Arizona requested, as allowed by EPA's Natural Events Policy (Memorandum entitled "Areas Affected by PM-10 Natural Events" from Mary D. Nichols, Assistant Administrator for Air and Radiation to Regional Air Division Directors, May 30, 1996), that the Agency exclude certain observed exceedances from our nonattainment determination because they were considered high wind natural events. The letters from the State requesting that we exclude or "flag" certain exceedances and EPA's responses concurring with the State's requests are included in the docket accompanying this rulemaking.

TABLE 2.—OWENS VALLEY NONATTAINMENT AREA PM-10 DATA SUMMARY 2004–2006³

[Sites in Violation of the 24-Hour PM-10 NAAQS]

Site name / AQS ID No.	Operating schedule	1st Max conc. $\mu\text{g}/\text{m}^3$	Number of observed exceedances	Number of estimated exceedances	Average number of estimated exceedances per year
Lone Pine, 06-027-0004	Every day	349	5	5.1	1.7
Olancho Walker Creek Road, 06-027-0021.	Every day	407	11	11	3.7
Olancho, Dirty Sox, 06-027-0022	Every day	4471	54	54	18
Olancho, Flat Rock, 06-027-0024	Every day	6171	11	11.8	3.9
Olancho, Shell Cut, 06-027-0025	Every day	6846	43	43	14.3
Olancho, Bill Stanley Site, 06-027-0026.	Every day	879	6	7	2.3
Keeler, 06-027-1003	Every day	3322	27	27	9

³ See footnote 1.

C. Tribal Lands

EPA intends to take final action to determine whether the Phoenix and Owens Valley nonattainment areas have attained the PM-10 NAAQS following notice and comment. We believe that the plain language of sections 179(c)(1) and 188(b)(2) mandates that we make such findings with respect to these areas. We also believe that, as a matter of EPA's federal implementation of

relevant provisions of the CAA over Indian country within the Phoenix and Owens Valley nonattainment areas, the findings of failure to attain should apply to these areas of Indian country. PM-10 continues to be a pervasive pollution problem in the Phoenix and Owens Valley nonattainment areas. PM-10 can be transported into an area from pollution sources found many miles away from its source. Therefore, EPA

recommends that boundaries for nonattainment areas be drawn to encompass both areas with direct sources of the pollution problem as well as nearby areas in the same airshed. EPA believes that this approach best ensures public health protection from the adverse effects of PM-10 pollution. Therefore, it is generally counterproductive from an air quality and planning perspective to segregate

land areas located well within the boundaries of a nonattainment area, such as the three Indian reservations in the Phoenix nonattainment area and the four Indian reservations in the Owens Valley nonattainment area. Moreover, violations of the PM-10 standard, which are measured and modeled throughout each of the nonattainment areas, as well as shared meteorologic conditions, would dictate the same result. EPA does, however, recognize the significance of Indian country boundaries within the nonattainment areas and, as described below, will consult with the affected Tribes regarding this finding of failure to attain the NAAQS and their Indian country.

III. Summary of Proposed Action

EPA is proposing to find that the Phoenix and Owens Valley nonattainment areas did not attain the 24-hour PM-10 NAAQS by the December 31, 2006 attainment deadline as discussed above in section II.

Under section 189(d) of the Act, serious PM-10 nonattainment areas that fail to attain are required to submit within 12 months of the applicable attainment date, "plan revisions which provide for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area."

In accordance with CAA section 179(d)(3), the attainment deadline applicable to an area that misses the serious area attainment date is as soon as practicable, but no later than 5 years from the publication date of the nonattainment finding notice. EPA may, however, extend the attainment deadline to the extent it deems appropriate for a period no greater than 10 years from the publication date, "considering the severity of nonattainment and the availability and feasibility of pollution control measures." In addition to the attainment demonstration and 5 percent requirements, the plans under section 189(d) for the Phoenix and Owens Valley nonattainment areas must address all applicable requirements of the CAA, including sections 110(a), 172(c), 176(c) and 189(c)(1).

Because the applicable attainment date for both nonattainment areas was December 31, 2006, under section 189(d), the submittal deadline for the plans will be December 31, 2007 if EPA's proposed findings of failure to attain are finalized.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action in and of itself establishes no new requirements, it merely notes that the air quality in the Phoenix nonattainment area and the Owens Valley nonattainment area did not meet the federal health standard for PM-10 by the CAA deadline. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not in and of itself establish new requirements, EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a), 179(d), and 189(d) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)). Therefore, today's proposed action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Several Indian tribes have reservations located within the boundaries of the Phoenix and Owens Valley nonattainment areas. EPA is responsible for the implementation of federal Clean Air Act programs in Indian country, including findings of failure to attain. EPA has notified the affected tribal officials and will be consulting with all interested tribes, as provided for by Executive Order 13175 (65 FR 67249, November 9, 2000). EPA will ensure that each tribe is contacted and given the opportunity to enter into consultation on a government-to-

government basis. This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action does not in and of itself create any new requirements and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. Because these proposed findings of failure to attain are factual determinations based on air quality considerations, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 15, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E7-5357 Filed 3-22-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 433

[CMS 2275-P]

RIN 0938-AO80

Medicaid Program; Health Care-Related Taxes

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.